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OFFICE OF PETITIONS

In re Patent No. 6,108,992
Issued: August 29, 2000
Application No.: 09/170,234
Filing Date: October 13, 1998
Attorney Docket No. **1123U101**

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: REQUEST FOR INFORMATION
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This is a request for information in response to the petition under 37 CFR 1.378(b), filed August 16, 2011, to reinstate the above-cited patent. It is noted that supplements to the response were filed on May 31, 2011, and August 5, 2011.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petition under 37 CFR 1.378(b) filed April 18, 2011. No additional fees are due.

The patent issued August 29, 2000. The 7.5 year maintenance fee could have been paid from August 29, 2007, through February 28, 2008, or with a surcharge, as authorized by 37 CFR 1.20(h), during the period from March 1, 2008, to August 29, 2008. Petitioner did not do so. Accordingly, the patent expired at midnight on August 29, 2008.

Petitioner is required to address the following points:

- The USPTO must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and the applicant is bound by the consequences of those action or inactions. See Link v. Wabash, 370 U.S. 626, 633-634 (1962). Specifically, petitioner's delay caused by the mistakes or negligence of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133. The actions of the attorney are imputed to the client, for when a petitioner voluntarily chooses an attorney to represent him, the petitioner cannot later avoid the repercussions of the actions or inactions of this selected representative for clients are bound by the acts of their lawyers/agents, and constructively possess "notice of all facts, notice of which can be charged upon the attorney" Id.

It is noted that petitioner's August 16, 2011, filing relies, in large measure, on the premise that Mr. Andre Arff, to whom the patent was previously assigned, was responsible for tracking and paying the maintenance fees for the patent. Further, a letter from Mr. Arff indicates that he was responsible for paying the maintenance fee, but did not pay the maintenance fee and failed to notify the patentee that he did not pay the fee. A successful petition under 37 CFR 1.378(b) requires that petitioner establish that the entire delay in paying the maintenance fee was

- It is noted that petitioner states that petitioner became aware that the 7.5-year maintenance fee was not paid in 2009, yet petitioner did not file a petition to reinstate the patent until April 2011. Petitioner states that petitioner inquired with Mr. Arff about the expiration of the patent and was told that Mr. Arff would look into the matter. Petitioner is advised, however, that as the sole inventor petitioner could have contacted the USPTO and inquired into the matter and even filed a petition to reinstate the patent at that time. Petitioner must explain how petitioner's failure to take any action soon after petitioner discovered the patent was expired in 2009, was unavoidable.
- It is noted that petitioner states that suffered a series of heart attacks beginning and 2008 and culminating with a heart attack in November 2010 that resulted in open heart surgery in November 2010. Certainly ill health can be a considered unavoidable delay; however, petitioner must provided documentary evidence of petitioner's ill health. Such would include medical records and/or statements from the treating physician documenting the time frame and severity of petitioner's illness. Petitioner is cautioned to be redact all personal identifiers such as, social security numbers and account numbers as these papers may be viewable to the public.

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petition Attorney
Office of Petitions